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THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

RODNEY M. TOOTHACRE, Plaintiff, v. UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE Defendant.	Case No. 07-cv-2289-DMS-WMC **UNITED STATES' MOTION FOR EXTENSION OF TIME TO ANSWER [FIRST REQUEST]**

The United States of America ("United States"), by and through its undersigned counsel, hereby respectfully submits this Motion for an Extension of Time To Answer the Complaint filed by Mr. Toothacre in the above-captioned case. In support of this motion, the United States avers as follows:

1. On December 6, 2007, Plaintiff filed his Complaint in this action. A Summons was issued to the United States on December 19, 2007. An answer or responsive pleading was due by February 19, 2008.

2. The Court scheduled a conference for February 26, 2008, to discuss the United States'

forthcoming motion to dismiss, and tolled the time for the United States' to respond until February 29, 2008. At this same conference, the parties stipulated to dismissal with prejudice of Plaintiff's claim for a temporary restraining order.

3. On February 28, 2008, the United States filed a motion to dismiss for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted pursuant to Rules 12(b)(1) and 12(b)(6), respectively, of the Federal Rules of Civil Procedure.

4. On June 5, 2008, this Court granted in part and denied in part the United States' motion to dismiss. As a result of this Order, the only remaining claim in this case is Plaintiff's claim for damages pursuant to 26 U.S.C. § 7432.

5. Rule 12(a)(4) provides that "[u]nless the courts sets a different time, serving a motion under this rule alters these periods as follows: (A) if the court denies the motion . . . the responsive pleading must be served within 10 days after notice of the Court's action . . . ." Fed. R. Civ. P. 12(a)(4)(A). Accordingly, the United States' Answer is now due on June 19, 2008.

6. Filed concurrently herewith is the United States' Motion to Stay Proceedings pending the outcome of Plaintiff's case in the United States Tax Court, Case No. 26375-06. As detailed in the United States' Motion to Stay Proceedings, the outcome of the Tax Court case will impact this case and potentially dispose of it altogether.

7. This motion is not made for the purposes of delay, rather it is made to preserve judicial resources, to prevent duplicative efforts and to prevent potentially inconsistent judgments.

8. This is the first request by the United States for an extension of time to Answer.

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WHEREFORE, the United States respectfully requests that this Court issue an order granting the United States ten days to file its Answer from when the Tax Court decision becomes final or, in the alternative, ten days from the Court's denial of this motion. A proposed order is submitted herewith.

DATED this 18th day of June, 2008.

Respectfully submitted,

KAREN P. HEWITT
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By: /s Caroline A. Newman
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of June, 2008, I electronically filed the foregoing **UNITED STATES' MOTION FOR EXTENSION OF TIME TO ANSWER and PROPOSED ORDER** with the Clerk of Court using the CM/ECF system, and sent a true and correct copy of the foregoing vis U.S. First Class Mail to:

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(Pro se)

s/ Caroline A. Newman

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